better business practice

How to make self-regulation work for consumers and business
This guide is intended to help business and the professions of all sizes design and run schemes that will gain public acceptance. It sets out good practice points and aims to make self-regulation work both for business and consumers.

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What is self-regulation?

Originally, self-regulation was presented by business as a way for consumers to identify better traders who subscribe to codes of practice. More recently it has been promoted as an alternative to regulation by government. To be effective, self-regulatory schemes should be credible in order to deliver consumer confidence. Schemes may be voluntary or have some basis in legislation.

Virtually all forms of self-regulation have at their heart a code of practice setting out the rules or standards members must meet. Most also set out ways of resolving consumer complaints or disputes, and say how the rules will be monitored and enforced.

Regulation generally aims to correct distortions or imbalances in the marketplace by promoting competition, rooting out fraud and enhancing safety, for instance. It may also be required to achieve wider social, economic or political goals – these will usually be the province of government.

Effective self-regulation can help a trade, business or profession to market itself to the public. But consumers naturally look for more than fine words.

To help gain public confidence, regulatory schemes will need to identify and publicise real consumer benefits.

• Does the scheme deliver better products, better service and swifter redress if things go wrong?
• Do its policy objectives serve or deny consumer interests in the marketplace?
Who is this guide for?

This guide is intended to help business and the professions of all sizes design and run schemes that will gain public acceptance. It sets out 13 good practice points, from broad-brush principles to vital elements of day-to-day operations. It aims to make self-regulation work both for business and consumers.

The main users of this guide will be people responsible for devising or improving ‘consumer’ codes of practice and self-regulatory schemes: trade associations and business, industry or professional bodies. Consumers involved in schemes may also find it useful to press for changes.

We will produce another guide for regulatory bodies, policy-makers in central and local government, chambers of commerce and anyone concerned with making self-regulation work more effectively.

Self-regulation on today’s business agenda

These guidelines fit with a number of initiatives designed to give ‘consumer’ codes of practice real bite.

- **The government’s white paper on consumer issues, modern markets: confident consumers (July 1999),** outlined core principles for effective codes of practice. It proposed to strengthen codes by providing a ‘seal of approval’ from the Office of Fair Trading (OFT) for codes that genuinely work to consumers’ advantage. This proposal needs legislation. The core principles are found in the table overleaf.

- **The National Consumer Council published Models of Self-regulation in October 1999,** giving an overview of codes in business and the professions. The current guidelines distil and develop its examples of good practice.

- **The Confederation of British Industry published its study of Trade Association Codes of Practice in March 2000.** This recommended practical collaboration to help associations strengthen their codes in anticipation of the OFT’s seal of approval.

- **The Better Regulation Task Force has developed a set of principles for self-regulatory regimes.** These are; transparency, accountability, targeting, proportionality and consistency. In July 2000 the Task Force published its review, Alternatives to State Regulation, exploring and mapping current arrangements.

- **The Consumers’ Association recently published Professional Self-regulation: A patient-centred approach.** This is a consultation document containing a number of proposals for improving regulation across all health professions.

- **The European Commission is working on a framework directive for fair trading.**

For further information:
Department of Trade and Industry
www.dti.gov.uk/consumer/whitepaper
Office of Fair Trading
www.of.t.gov.uk
Confederation of British Industry
www.cbi.org.uk
Better Regulation Task Force
www.cabinet-office.gov.uk
Consumers’ Association
www.which.net
European Commission
www.europa.eu.int/index-en.htm
### The credible self-regulatory scheme: a consumer checklist

- The scheme should be able to command public confidence.
- There should be strong external consultation and involvement with all relevant stakeholders in the design and operation of the scheme.
- As far as is practical, the operation and control of the scheme should be separate from the institutions of the industry.
- Consumer, public interest and other independent representatives should be fully involved (if possible, up to 75 per cent or more) on the governing bodies of self-regulatory schemes.
- The scheme should be based on clear and intelligible statements of principle and measurable standards — usually in a code — which address real consumer concerns. The objectives should be rooted in the reasons for intervention.
- There should be clear, accessible and well-publicised complaints procedures where breach of the code is alleged.
- There should be adequate, meaningful and commercially significant sanctions for non-observance.
- Compliance should be monitored (for example through complaints, research and compliance letters from chief executives).
- Performance indicators should be developed, implemented and published to measure the scheme’s effectiveness.
- There should be a degree of public accountability, such as an annual report.
- The scheme should be well publicised, with maximum education and information directed at consumers and traders.
- Independence is vital in any redress scheme that includes the resolution of disputes between traders and consumers.
- The scheme should be regularly reviewed and updated in the light of changing circumstances and expectations.
- The scheme should have adequate resources and be funded in such a way that the objectives are not compromised.
- The rules should identify the intended outcomes.

### Core principles for codes from the government’s consumer white paper

- Consumers should see:
  - truthful advertisements
  - clear, helpful and adequate pre-contractual information
  - clear, fair contracts
  - staff who know about and meet the terms of the code as well as their legal responsibilities.
- The sponsor should tailor the core principles to develop its own code, taking into account the needs and characteristics of the sector such as the size of businesses within it, and keep it up to date.
- The sponsor should have a supervisory body for the code made up of people from the sector, consumers and some independent members.
- Businesses in the sector should agree to deliver on the principles in the tailored code and report regularly to the sponsor on the operation of the code.
- Consumers should see an effective complaints handling system run by the business.
- The sponsor should put in place an effective system to underpin compliance and to address breaches by members.
- The sponsor should publish a report about compliance with the code and on complaints about its operation.
- Consumers should see publicity about the code from the business and the sponsors, including a report on the operation of the code.
- The redress and compliance systems should, where necessary or possible, include an independent element.
- Consumers should see an effective and low-cost redress mechanism (if problems cannot be resolved in-house).
- The sponsor should keep the code up to date.
Thirteen points of good practice

Starting out
These initial good practice points touch on broad issues of principle that need to be built in to any effective scheme for self-regulation. A scheme may not meet all the criteria immediately. The best way forward is to start by addressing the main difficulties that consumers face. Self-regulatory regimes that exist in place of legislation will face more pressure to get the detail right from the outset.

1. Clear objectives
Any form of regulation is a means to an end and should start by defining its goals. This calls for the setting of clear and intelligible rules which set standards, and which might be contained in the form of a code of practice. The rules should always seek to identify the intended outcomes whilst addressing real consumer concerns.

Clear rules
When consumers hire service providers like electrical contractors, they want to be sure that work will be carried out competently. The enrolment criteria for the National Inspection Council for Electrical Installation Contracting (NICEIC) set out the basic competencies electrical contractors must meet before they join the scheme. These are the kind of objectives consumers expect systems of self-regulation to deliver:

• prohibiting oppressive marketing practices
• raising or setting standards (technical and/or service standards)
• providing information
• resolving disputes
• protecting vulnerable groups.

Clear promises and measurable performance
One of Australia’s leading insurance companies AAMI introduced a customer charter in 1996. This now sets out 18 specific performance promises, including:

• availability of decision-makers to deal with claims and queries
• plain language documentation
• detailed responses to all written customer enquiries within five working days
• safeguarding of personal information
• detailed promises relating to motor and household insurance
• free and accessible internal dispute resolution procedures
• a $30 penalty payment for failure to meet any promise.

The company’s performance is independently audited and an annual report published setting out performance against standards, the nature and extent of penalties paid, and details of the audit process. AAMI’s market share has increased year-upon-year since the introduction of their Customer Charter.

For further information:
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www.aami.com.au

Codes of practice give business and the professions an ideal opportunity to go beyond the law in setting high standards or offering better redress. However, if the code has the effect of inhibiting competition, it would not be to consumers’ advantage and may infringe upon competition law.
Known problem areas
Codes should seek to deal with known problem areas for consumers. Each sector will present its own range of problems and potential risks for consumers. Business can increase consumer confidence by tackling the most significant problems first. For example, insurance and deposit protection schemes may deal with the risks of business insolvency in package travel and building work; specified levels of technical competence may be the answer to fears of shoddy workmanship in some industries; and better information about the track records of businesses can help where consumer trust is low (although care is needed to prevent this becoming a barrier to entry into the market).

For consumers using the internet, distinguishing between scams and legitimate information, and between reliable and unreliable businesses can be a challenge. For businesses that market products and services online, portraying corporate reliability is one of the keys to gaining consumer confidence.

The Better Business Bureau in the USA has developed BBBOnline to help businesses and consumers safely navigate the often uncharted waters of the internet.

When a company displays the unique BBBOnline seal in its online advertising, this secured seal provides a link to a company’s Better Business Bureau reliability report. This report reveals a company’s past marketplace performance. Only companies that meet strict Better Business Bureau standards have access to this seal. After reading the report and seeing the seal, consumers can link back to a company’s home page.

BBBOnline is designed to take advantage of internet technology to help consumers get the information they need at precisely the moment they are considering making a purchase. It provides a tool to identify companies who meet high standards, make commitments to their customers, and agree to resolve complaints quickly and fairly.

For further information:
BBBOnline Inc.
4200 Wilson Boulevard
8th Floor
Arlington
VA 22203
USA
www.bbbonline.org

2. The ingredients of regulation
Self-regulation covering consumer transactions needs three ingredients:
• rules
• monitoring and enforcement, including the imposition of sanctions
• a redress mechanism.

Some existing schemes incorporate these three functions into a single system, while others divide them up between different bodies. Independent input in these functions is vital. How schemes can build independence into their structures is covered in points 5 and 6.

3. Wide consultation
Most codes have been developed within the industry or profession concerned, and only gradually improved upon through outside influence. New schemes can accelerate this process by consulting widely about matters of design and operation. This consultation process will usually extend to all stakeholders identified by those promoting a scheme, including government, regulatory and representative bodies (including those representing consumers). Schemes will also need to inform and consult individual consumers. Options for canvassing their views include focus groups, in-depth interviews, surveys, user panels, comments and complaints.

Structures and governance
4. A dedicated structure
The most effective schemes (for example, in advertising, direct marketing and the private sector ombudsmen) have their own dedicated structures, separate from the industry’s institutions. These have the greatest bite and engender the highest public confidence. Self-regulation in effect ‘polices’ behaviour and decides when rules are broken. Consumers will inevitably question the impartiality of schemes where these roles are undertaken directly by an industry or profession – for example, within trade associations. However, the ideal is not always attainable, at least immediately. A code administered by a trade organisation, if properly structured and implemented, can be better than none at all.
Independent representation in advertising

Britain’s independent Advertising Standards Authority (ASA) is responsible for enforcing the British Codes of Advertising and Sales Promotion. The ASA’s independence is key to its acceptance as a robust self-regulator. Eight of the ASA’s twelve members are lay and the remainder are independent individuals (not delegates) who bring useful first-hand experience of advertising. The ASA monitors compliance with the codes and investigates over 12,000 complaints a year – a clear tribute to its very public persona.

5. Independent representation

The governing bodies of self-regulatory schemes should include a majority of independent representatives – if possible, up to 75 per cent. This might include professionals, academics, representatives of other industries and statutory regulators, as well as consumers. Where outside representatives are in a minority, they may need the power of veto, or special voting rights.

Schemes should avoid the temptation to ‘window-dress’ with one or two consumer representatives without wide-ranging expertise or access to research and other resources. Ideally, the chairperson should be independent and consumer representatives should be given appropriate training to help them fulfil their role.

6. Monitoring compliance

Compliance with the scheme should be monitored – for instance, through qualitative and quantitative research, mystery shopping, complaints, performance audits, or detailed compliance statements from chief executives of participating firms. ‘Compliance statements’ are essential and are generally the cheapest form of compliance, but they can never be sufficient in themselves.

Audit of insurance intermediaries

The Association of British Insurers’ (ABI) Code of Selling of General Insurance has incorporated a number of effective features into its regime for insurance intermediaries. Member insurers pay for an ongoing audit of independent intermediaries, to check compliance with the code. The audit involves a comprehensive questionnaire, risk assessment, compliance audits, advice on compliance, with links to a disciplinary process if advice has no effect. The ABI also uses mystery shoppers to check compliance.
Voluntary self-regulation has been used by the Association of British Insurers on several occasions.

**Monitoring the Code of Banking Practice**

The Banking Code Standards Board (which includes consumer and other ‘outside interest’ representatives) monitors observance of the Code of Banking Practice. Until recently, the former Independent Review Body for banks and mortgages employed only one member of staff for monitoring; it relied, in practice, on asking banks and building societies to certify they had systems in place for observing the code’s provisions. Complaints and press coverage added a further dimension, but there was little measurement of what actually happened to consumers. New arrangements for more effective monitoring include on-site inspections and mystery shopping visits.

**8. Good publicity**

Consumers and traders need to know that the scheme exists and what it can do for them. Consumers must have a way of identifying member firms, so information available through local (and national) media and advice agencies should be clear and consistent.

A web site is an effective and economical means of providing current information to consumers. However, even if there were universal access to the internet, a web site would not be adequate publicity by itself.

*Under the Mortgage Code, members must give customers at their first meeting an explanatory leaflet alerting them to the code.*

**9. Adequate resources**

A scheme must have adequate resources and be funded in such a way that its objectives are not compromised. For the General Insurance Code the Association of British Insurers spends £40,000 a year on each mystery shopping exercise, and some £2 million a year on the compliance monitoring service. To fund the Banking Code Standards Board, the smallest banks and building societies pay £500 a year, while the largest institutions pay £45,000. These figures are at the top end of the range of what is required. In most sectors a more modest budget would be sufficient.

**10. Well-publicised complaints procedures**

All schemes should have clear, accessible and well-publicised complaints procedures to deal with alleged breaches of the code. The code should contain a requirement that members have a formal internal complaints practice and that complaints are dealt with speedily and fairly. An independent ombudsman system, separate from the rest of the scheme, is the ideal for the resolution of disputes between traders and consumers. Informal conciliation should be seen as a stepping stone towards and not as a substitute for an open and independent system.
11. Effective sanctions
To be taken seriously, self-regulation demands adequate, meaningful and commercially significant sanctions for non-compliance. Failures to redress wrongs would be a particularly significant breach. Penalties can include fines, suspension, or the threat of expulsion.

Sanctions for premium rate telephone call services
Under the ICSTIS code (Independent Committee for the Supervision of Standards of Telephone Information Services) sanctions range from assurances about future behaviour, to a fine or a recommendation that access be barred to telephone numbers operated by the company subject to the complaint – in effect, closing down its operations. ICSTIS is currently working with OfTEL to shift the regulatory structure to a co-regulatory arrangement.

12. Performance indicators
Performance indicators should draw on the experience of similar schemes in other sectors but should not shy away from finding new, innovative approaches. The true test of success is to devise performance indicators that are meaningful. The two most useful ones are customer satisfaction (for standards of customer service generally) and adherence to a code of practice. However, both are fairly expensive to measure and the results need to be interpreted with caution (for example, insurance companies have observed that customer satisfaction tends to increase when there is an increase in claims and to decrease when premiums rise).

Measuring customer satisfaction is best done through surveys, and the ideal way to measure adherence to a code is through mystery shopping. Both methods can be used to compare companies at a given time and also to observe trends. They should be frequently tested for their probing qualities and fairness, and run on a regular basis.

Performance indicators for the redress element can include the time taken to deal with complaints and also surveys of complainants.

An organisation’s annual report should always include a comprehensive assessment of performance using the selected indicators. As such, headline numbers will seldom be meaningful.

13. Regular reviews
The scheme must be reviewed regularly and updated in light of changing circumstances and expectations. Reviews should include strong external consultation and involvement from those representing consumers.

Changes to the Code of Banking Practice
The voluntary Banking Code includes these key commitments:

- acting fairly and reasonably
- giving information in plain language
- helping to choose a product suitable for the customer’s needs
- correcting mistakes and handling complaints speedily
- treating financial difficulty and mortgage arrears sympathetically and positively.

The code has been regularly reviewed and passed through several editions. The financial services industry and consumer and advice organisations are consulted on content. The code was recently updated to ensure that customers with obsolete accounts obtained proper rates of interest.
For good practice in self-regulation ask yourself:

• Does your code define measurable standards and set clear policy objectives?
• Does your scheme deal with known problem areas?
• Does your scheme have its own dedicated structure?
• Does the governing body of the scheme have a majority of independent representatives?
• Are your complaints procedures clear, accessible and well publicised?
• Is your redress scheme sufficiently independent?
• Are your sanctions for non-compliance effective?
• Does your scheme have adequate arrangements to monitor compliance?
• Does your scheme have good, meaningful performance indicators to measure its effectiveness?
• Does your scheme account publicly for performance – for example, through an annual report?
• Do you check with consumers to see if your scheme is known and valued?
• Is your scheme well publicised among consumers and traders?
• Is your scheme adequately funded?
• Are your scheme's provisions reviewed regularly to meet changing expectations?